

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARY TOMOOKA,

Plaintiff,

v.

AMERICAN EXPRESS COMPANY, et al.,

Defendants.

Case No.: 1:22-cv-00942-AWI-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Pleading Amendment Deadline: March 15, 2023

Discovery Deadlines:

Non-Expert: August 1, 2023

Expert: October 12, 2023

Mid-Discovery Status Conference: March 15,
2023, 9:00 a.m.

Non-Dispositive Motion Deadlines:

Filing: October 26, 2023

Hearing: On/before November 30, 2023, 10:30 a.m.

Dispositive Motion Deadlines:

Filing: December 30, 2023

Hearing: On/before February 12, 2024, 1:30 p.m.
Courtroom 2, Fresno

Pre-Trial Conference: March 21, 2024, 10:00 a.m.
Courtroom 2, Fresno

Trial: May 21, 2024, 8:30 a.m.
Courtroom 2, Fresno (Jury trial: 7-10 days)

1 Plaintiff Mary Tomooka (“Plaintiff”) filed this action on July 28, 2022, against Defendants
2 American Express National Bank (“American Express”), American Recovery Services Inc. (“ARSI”),
3 Experian Information Solutions, Inc., Trans Union LLC, and Equifax Information Services, LLC.
4 Plaintiff asserts claims under the Fair Credit Reporting Act (15 U.S.C. § 1681n *et seq.*) and seeks to
5 recover from the Defendants actual, statutory, and punitive damages.

6 On October 18, 2022, Plaintiff and Defendant ARSI filed a notice of settlement, and ARSI
7 was dismissed from the action on November 3, 2022. By order on stipulation dated October 24,
8 2022, the Court stayed the action as to Defendant American Express only to facilitate arbitration.

9 On November 2, 2022, the Court convened the parties for a scheduling conference. Counsel
10 for Plaintiff did not appear, and a staff assistant reported that Counsel was unavailable due to an
11 emergency. Thomas Quinn, Alex Murcia and Jason Roberts appeared via videoconference on behalf
12 of Defendants.

13 **I. Information Concerning the Court’s Schedule**

14 The Fresno Division of the Eastern District of California now has the heaviest District Court
15 Judge caseload in the entire nation. While the Court will use its best efforts to resolve this case and
16 all other civil cases in a timely manner, not all of the parties’ needs and expectations may be met as
17 expeditiously as desired. As multiple trials are set to begin upon the same date, parties may find their
18 case trailing with little notice before the trial begins. The Court must prioritize any criminal trial over
19 civil trials or any other matter, even if a civil trial was filed earlier and set for trial first. Continuances
20 of any civil trial under these circumstances are highly disfavored absent a specific and stated finding
21 of good cause. Any civil trial set to begin during the time a criminal trial is proceeding will trail the
22 completion of the criminal trial.

23 The parties are reminded of the availability of a United States Magistrate Judge to conduct all
24 proceedings in this action, including trial through entry of final judgment, pursuant to 28 U.S.C. §
25 636(c), Federal Rule of Civil Procedure 73, and Local Rule 305. The same jury pool is used by both
26 United States Magistrate Judges and United States District Court Judges. Any appeal from a
27 judgment entered by a United States Magistrate Judge is taken directly to the United States Court of
28 Appeal for the Ninth Circuit. The parties are informed that no substantive rulings or decisions will be

1 affected by whether a party chooses to consent.

2 Finally, the Fresno Division of the Eastern District of California, whenever possible, is using
3 United States District Court judges from throughout the nation as Visiting Judges. Pursuant to the
4 Local Rules, Appendix A, reassignments will be random, and the parties will receive no advance
5 notice before their case is reassigned to an District Court judge from outside of the Eastern District of
6 California.

7 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
8 conduct all further proceedings, including trial. If not already, within 10 days of the date of this
9 order, the parties SHALL file a consent/decline form (provided by the Court at the inception of this
10 case) indicating whether they will consent to the jurisdiction of the Magistrate Judge.

11 **II. Pleading Amendment Deadline**

12 Any requested pleading amendments are ordered to be filed, either through a stipulation or
13 motion to amend, no later than **March 15, 2023**.

14 **III. Discovery Plan and Cut-Off Date**

15 The parties are ordered to complete all discovery pertaining to non-experts on or before
16 **August 1, 2023**, and all discovery pertaining to experts on or before **October 12, 2023**.

17 The parties are directed to disclose all expert witnesses¹, in writing, on or before **August 15,**
18 **2023**, and to disclose all rebuttal experts on or before **September 12, 2023**. The written designation
19 of retained and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B),
20 and (C) and shall include all information required thereunder. Failure to designate experts in
21 compliance with this order may result in the Court excluding the testimony or other evidence offered
22 through such experts that are not disclosed pursuant to this order.

23 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
24 experts and their opinions. Experts must be fully prepared to be examined on all subjects and
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28 ¹ In the event an expert will offer opinions related to an independent medical or mental health
evaluation, the examination SHALL occur sufficiently in advance of the disclosure deadline so the expert's
report fully details the expert's opinions in this regard.

1 opinions included in the designation. Failure to comply will result in the imposition of sanctions,
2 which may include striking the expert designation and preclusion of expert testimony.

3 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
4 disclosures and responses to discovery requests will be strictly enforced.

5 A mid-discovery status conference is scheduled for **March 15, 2023** at 9:00 a.m. before
6 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
7 report **one week before the conference**. Counsel also SHALL lodge the joint status report via e-mail
8 to CDBorders@caed.uscourts.gov. The joint status report SHALL outline the discovery counsel have
9 completed and that which needs to be completed as well as any impediments to completing the
10 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify
11 in the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates
12 for convening a settlement conference with Magistrate Judge Baker.

13 **IV. Pre-Trial Motion Schedule**

14 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
15 than **October 26, 2023²**, and heard on or before **November 30, 2023**. Non-dispositive motions are
16 heard at 10:30 a.m., before Magistrate Judge Baker.

17 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
18 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
19 discovery motions shall be filed without the prior approval of the Magistrate Judge Baker. A party
20 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
21 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly
22 shall seek a telephonic hearing with all involved parties and Magistrate Judge Baker. To schedule
23 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
24 (661) 326-6620 or via email at SHall@caed.uscourts.gov. At least three days before the conference,
25 counsel SHALL file informal letter briefs detailing their positions. The briefs may not exceed 7
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28 ² Non-dispositive motions related to non-expert discovery SHALL be filed within a reasonable time of
discovery of the dispute, but in no event later than 30 days after the expiration of the non-expert discovery
deadline.

pages, excluding exhibits. Counsel must comply with Local Rule 251 with respect to discovery disputes or the motion will be denied without prejudice and dropped from the Court's calendar.

All dispositive pre-trial motions shall be filed no later than December 30, 2023, and heard no later than February 12, 2024 in Courtroom 2 at 1:30 p.m. before the Honorable Anthony W. Ishii, United States District Court Judge. In scheduling such motions, counsel shall comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.

V. Motions for Summary Judgment or Summary Adjudication

At least 21 days before filing a motion for summary judgment or motion for summary adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be raised in the motion.

The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the issues for review by the court; 5) explore the possibility of settlement before the parties incur the expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

The moving party SHALL initiate the meeting and SHALL provide a complete, proposed statement of undisputed facts **at least five days before** the conference. The finalized joint statement of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint statement of undisputed facts.

In the notice of motion the moving party SHALL certify that the parties have met and conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.

VI. Pre-Trial Conference Date

March 21, 2024 at 10:00 a.m. in Courtroom 2 before Judge Ishii.

The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The parties are further directed to submit a digital copy of their pretrial statement in Word format, directly to Judge Ishii's chambers, by email at AWIOrders@caed.uscourts.gov.

Counsels' attention is directed to Rules 281 and 282 of the Local Rules of Practice for the

1 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial
2 conference. The Court will insist upon strict compliance with those rules. In addition to the matters
3 set forth in the Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to
4 be used by the Court to explain the nature of the case to the jury during voir dire.

5 **VII. Trial Date**

6 May 21, 2024 at 8:30 a.m. in Courtroom 2 before the Judge Ishii.

7 A. This is a jury trial.

8 B. Counsels' Estimate of Trial Time: 7-10 days.

9 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
10 California, Rule 285.

11 **VIII. Settlement Conference**

12 The parties have not agreed to schedule a Settlement Conference at this time. To schedule a
13 Settlement Conference, the parties may contact the Courtroom Deputy Clerk, Susan Hall, at (661)
14 326-6620 or via email at SHall@caed.uscourts.gov. If a Settlement Conference is scheduled, it shall
15 be before Magistrate Judge Baker, or if the parties later consent to magistrate judge jurisdiction for
16 trial, a different magistrate judge to be determined at a later date.

17 Unless otherwise permitted in advance by the Court, the attorneys who will try the case shall
18 appear at any settlement conference with the parties and the person or persons having full authority to
19 negotiate and settle the case on any reasonable terms³ at the conference. Consideration of settlement
20 is a serious matter that requires preparation prior to the settlement conference. Set forth below are the
21 procedures the Court will employ, absent good cause, in conducting the conference.

22 At least 21 days before the settlement conference, Plaintiff SHALL submit to Defendants via
23 fax or e-mail, a written itemization of damages and a meaningful⁴ settlement demand which includes
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26 ³ Insurance carriers, business organizations, and governmental bodies or agencies whose settlement
27 agreements are subject to approval by legislative bodies, executive committees, boards of directors or the like
may be represented by a person whose recommendations about settlement are relied upon by the ultimate
decision makers.

28 ⁴ “Meaningful” means the offer is reasonably calculated to settle the case on terms acceptable to the
offering party. “Meaningful” does not include an offer which the offering party knows will not be acceptable to
the other party. If, however, the offering party is only willing to offer a settlement which it knows the other

1 a brief explanation of why such a settlement is appropriate. Thereafter, no later than 14 days before
2 the settlement conference, Defendants SHALL respond, via fax or e-mail, with an acceptance of the
3 offer or with a meaningful counteroffer which includes a brief explanation of why such a settlement is
4 appropriate. The parties SHALL continue to exchange counteroffers until it is no longer productive.

5 If settlement is not achieved, each party SHALL attach copies of their settlement offers to
6 their Confidential Settlement Conference Statement, as described below. Copies of these documents
7 shall not be filed on the court docket.

8 CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

9 **At least five court days before** the settlement conference, the parties shall submit, directly to
10 Magistrate Judge Baker's chambers by e-mail to CDBOrders@caed.uscourts.gov, a Confidential
11 Settlement Conference Statement. The statement should not be filed with the Clerk of the Court nor
12 served on any other party, although the parties may file a Notice of Lodging of Settlement
13 Conference Statement. Each statement shall be clearly marked "confidential" with the date and time
14 of the settlement conference indicated prominently thereon.

15 The Confidential Settlement Conference Statement shall include the following:

- 16 A. A brief statement of the facts of the case.
 - 17 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon
18 which the claims are founded; a forthright evaluation of the parties' likelihood of
19 prevailing on the claims and defenses; and a description of the major issues in dispute.
 - 20 C. A summary of the proceedings to date.
 - 21 D. An estimate of the cost and time to be expended for further discovery, pretrial and
22 trial.
 - 23 E. The relief sought.
 - 24 F. The party's position on settlement, including present demands and offers and a history
25 of past settlement discussions, offers and demands.
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party will not accept, this should trigger a recognition the case is not in a settlement posture and the parties
should confer about continuing or vacating the settlement conference via stipulation.

1 **IX. Requests for Bifurcation, Appointment of Special Master, or other**
2 **Techniques to Shorten Trial**

3 Not applicable at this time.

4 **X. Related Matters Pending**

5 There are no pending related matters.

6 **XI. Compliance with Federal Procedure**

7 All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure
8 and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any
9 amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently
10 handle its increasing case load, and sanctions may be imposed for failure to follow both the Federal
11 Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

12 **XII. Effect of this Order**

13 The foregoing order represents the best estimate of the court and counsel as to the agenda
14 most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If
15 the parties determine at any time that the schedule outlined in this order cannot be met, counsel are
16 ordered to notify the court immediately of that fact so that adjustments may be made, either by
17 stipulation or by subsequent status conference.

18 **The dates set in this Order are considered to be firm and will not be modified absent a**
19 **showing of good cause even if the request to modify is made by stipulation. Stipulations**
20 **extending the deadlines contained herein will not be considered unless they are accompanied by**
21 **affidavits or declarations, and where appropriate attached exhibits, which establish good cause**
22 **for granting the relief requested.**

23 Failure to comply with this order may result in the imposition of sanctions.

24 IT IS SO ORDERED.

25 Dated: November 15, 2022

26 
UNITED STATES MAGISTRATE JUDGE